
(1980) 12 DEL CK 0035
In the Delhi High Court
Case No : C.W. No. 680 of 1980

Deep Chand Mittal and others	Vs	APPELLANT
Lt. Governor of Delhi and others		RESPONDENT

Date of Decision : 10-12-1980

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 3, 3(1), 5, 6, 6(1A)

Citation : AIR 1981 Delhi 162

Hon'ble Judges : Charanjit Talwar, J;A.B. Rohtagi, J

Bench : Division Bench

Advocate : B.T. Singh, for the Appellant; M.L. Verma, for the Respondent

Final Decision : Allowed

Judgement

Avadh Behaki Rohatgi, J.—The single question in this writ petition is whether the requisitioning authority is bound to release the property from requisitioning where the purpose for which property was requisitioned has partially, it not wholly, ceased to exist.

2. One Atma Ram was the owner of property No. B-4/12, Asaf Ali Road, New Delhi. On January 24, 1964, the Competent Authority u/s 3 (1) of the Requisitioning and Acquisition of Immovable Property Act, 1952 (the Act) issued notice to the owner that the property described in the schedule was needed for a public purpose, namely for "accommodating Public Office being a purpose of the Union" and to show cause why the said property should not be requisitioned. In the schedule to the notice the property was described as:

"Accommodation in occupation of Town and Country Planning Organisation in all the three floors in Building No. B-4/12, Asaf Ali Road, New Delhi"

3. The owner showed cause but to no purpose. On March 12, 1964 the property was requisitioned ""for accommodating Public Offices."

4. From 1964 to 1980 the property remained requisitioned. During this period the owner, Atma Ram, sold the property to the petitioners by a sale deed dated August 27, 1969. The requisitioning authority attorned to the petitioners and the requisitioning continued as before.

5. On January 23, 1980, the Collector, Delhi, made an order that the requisitioned property "is hereby derequisitioned with immediate effect. The vacant possession be handed over to the landlord after vacation of the present allottees." The petitioners were informed that the occupants have been allotted alternative accommodation and that vacant possession will be handed over to them. But this was not done. On March 28, 1980, the petitioners complained that in spite of the order of derequisitioning vacant possession had not been delivered to them.

6. On March 7, 1980, an ordinance called Requisitioning and Acquisition of Immovable Property (Amendment) Ordinance was passed. This was passed to amend the Act. The period of ten year³ mentioned in Section 6 (1-A) of the Act was enhanced to 15 years. As such the competent authority was empowered to retain the property under requisition up to 1985.

7. On July 31, 1980 the order of derequisitioning was revoked. This is why the Government did not deliver vacant possession. The property though once derequisitioned continued to be under requisitioning by virtue of the amendment of the Act.

Now the case of the petitioners is that after requisitioning the property was allotted by the Collector, to begin with, as follows:

(a) entire second floor and half of the first floor to the Public Works Department.

(b) remaining half portion on the first floor to the Wakf Board.

The Wakf Board continued to occupy its portion till some time in 1969. On vacation by the Wakf Board a part of the premises was allotted to one Shh Khazanchi, Assistant Sales Tax Officer, for residence. In the counter-affidavit the Government does not dispute that at present the Public Works Department and Mr. Khajanchi are in occupation of the requisitioned property. Public Works are using the property for purposes of office. Mr. Khazanchi is using for purposes of residence.

8. On this admission it is contended that the property is no longer being used exclusively for public offices and that the user of a part of the property for residential purposes is in contravention of the Act. It is said that the requisitioning purpose has ceased to exist and therefore the Government must release the property from requisitioning.

9. Section 3 of the Act, so far as it is relevant, reads:

"Power to requisition immovable property :-

(1) Where the competent authority is of opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the Union, and that the property should be requisitioned, the competent authority

(a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned;

...

Section 5 is quite emphatic in its tone.

It says :

"Rights over requisitioned property. -

(1) All property requisitioned u/s 3, shall be used for such purposes as may be mentioned in the notice of requisition.

...

Section 6 provides:

"Release from requisitioning. - (1) The Central Government may at any time release from requisition any property requisitioned under this Act and shall as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force;

Provided that where the purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired u/s 7, release that property, as soon as may be, from requisition....."

These three sections abundantly make it clear that the purpose of requisitioning has to be specified and that the property has to be used only for the stated purpose. When that purpose ceases to exist the Central Government is bound to release the property from requisitioning as soon as may be. Stated briefly this is the law.

10. The property in question was requisitioned in 1964 for "public offices" which no doubt is a public purpose. Now admittedly in a part of the property Public Works Department offices are housed. In another part Mr. Khazanchi is residing. Residence of the officer is not the purpose for which the property was requisitioned. Therefore, the requisitioned property cannot be used as a residence. It is a misuse. It is illegal. Therefore, one can conclude that the purpose of "public office" has ceased to exist partially if not wholly. What is the effect of this partial cessation? This is the question. In my opinion, the effect of cesser is that the whole of the property has to be released by the Government from requisitioning. Such is the result of a conjoint reading of Secs. 3, 5 and 6.

Such is the inevitable consequence.

11. It was said that only the portion in the occupation of Shri Khazanchi will have to be released and not the rest of the property which is in occupation of the Public Works Department. I cannot accept this argument. The requisitioning order is one and indivisible. It was made on March 12, 1964. It cannot be separated in two parts because it cannot be so divided. The property was requisitioned in 1964. The compensation was fixed at Rs. 1400/- per month. The property as one unit was requisitioned and compensation was accordingly fixed. When the purpose ceases to exist the whole property has to be vacated. The thread of oneness runs throughout the Act. The order of requisitioning was one. So is the property. So compensation of Rs. 1400 p.m. We cannot sever them. The question is two fold. Did the legislature intend the order of requisitioning to be separable, and is the order capable of separation in fact? The answer to these questions rests upon a judicial determination of legislative intent. I can find: nothing in the Act on which the claim of separability can be founded.

12. The purpose of the Act is to empower the Government to requisition a property for a public purpose. When that purpose ceases the Government has to release the property from requisitioning. The Government cannot use the property save and except for the purpose for which it was requisitioned. If that purpose, partially or wholly, has ceased to exist, the property must go out of the hands of the requisitioning authority. The grasping hands of the authority cannot hold the property any longer. That a part of the property is now being used for residence is indicative of the fact that the purpose has ceased to exist, at least partially. The use of the property for residence is in plain violation of the statute. The power of requisitioning has to be exercised in accordance with the Act. Within the four corners of the Act this power is confined, cabined and caged. The empowering enactment does not contemplate that the property or any part of it can be used for residence when the whole has been requisitioned for "public offices." Specification of the purpose of requisition and the use of the requisitioned property for specified purpose are mandatory requirements of law.

13. It was said that the petitioners are estopped from challenging the perversion of user of the property as they raised no objection in 1969 or thereafter. I do not agree. Against the statute there can be no estoppel. The governing statute lays down that when the purpose ceases to exist the property must be released. I, therefore, come to the conclusion that the property cannot be retained by the Government as a requisitioned property and must be released by it.

14. For these reasons I allow the writ petition and order the Government to vacate the requisitioned property and deliver its vacant possession to the petitioners within one month from today. The parties are, however, left to bear their own costs.

Charanjit Talwar, J.

15. I agree.